

**Otto v Okot & 2 Ors (Miscellaneous
Civil Application No. 158 of 2014)
[2019] UGHCCD 61 (12 February 2019)
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STEPHEN MUBIRU, J.

Introduction:

- [1] The plaintiffs jointly and severally sued the defendant for recovery of a sum of shs. 46,980,834/= exemplary damages, interest and costs arising out of breach of contract. Their claim is that the applicant borrowed a sum of money from them and only made a partial repayment, leaving the amount claimed as the balance due and outstanding. In his written statement of defence, the defendant stated that he borrowed the money as a mere agent of M/s OR-Sabas Enterprises Limited and a one Oryem Sebastian. The money was applied towards implementing construction works contracted to that company by Oyajm District Local Government, wherein the defendant was a sub-contractor. Upon completion of the contract, money was paid into the account of M/s OR-Sabas Enterprises Limited to which Oryem Sebastian was signatory. He has since vanished without re-payment of the loan and paying the defendant for his services.
- [2] When the suit came up for conferencing on 29th March, 2017, counsel for the defendant prayed for a judgment in default of appearance to be entered against M/s OR-Sabas Enterprises Limited and Oryem Sebastian on grounds that a third party notice had been issued on 29th March, 2015 and served on the third parties, who had since not filed a defence to the suit.

General principles:

- [3] Under Order 1 rule 16 (a) of *The Civil Procedure Rules*, judgment may be entered at the instance of a defendant in a suit, against a third party in default of appearance, where such defendant has suffered judgment by default of the third party entering an appearance in the suit. Such judgment will ordinarily be entered against the third party only after the defendant has caused the satisfaction of the decree against himself or herself to be entered upon the record. The judgment against the third party is then limited to the extent of the contribution or indemnity claimed in the third party notice. Furthermore, Order 1 rule 16 (a) of *The Civil Procedure Rules,* permits court to enter judgment against the third party before the defendant has satisfied the decree passed against him or her.
- [4] In both situations, there is the basic pre-condition of the existence a decree passed against the defendant by reason of default of the third party entering an appearance in the suit, save that in (a) it is passed after the defendant has caused satisfaction of the decree, while in (b) it is entered against the third party before the defendant has satisfied the decree. This is premised on the fact that by a third party's default, the third party is deemed to admit the validity of and to

Decision.

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